Dorsey Trailers, Inc., Northumberland, PA Plant *and* United Auto Workers International Union and its Local 1868. Case 4–CA–21968

July 3, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND FOX

On February 15, 1995, Administrative Law Judge Karl H. Buschmann issued the attached decision. The General Counsel, the Charging Party, and the Respondent filed exceptions and supporting briefs. The Respondent also filed answering briefs to the General Counsel's and the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.

The judge concluded, in reliance on *Torrington Industries*, 307 NLRB 809, 810 (1989), and *Furniture Rentors of America*, 311 NLRB 749 (1993), enfd. in part 36 F.3d 1240 (3d Cir. 1994), that the Respondent's decision to subcontract[2] certain work to another company located in Atlanta, Georgia, was not a mandatory subject of bargaining, based on his findings that there was neither a labor-cost motive for the Respondent's decision nor any adverse impact on the bargaining unit. Therefore, the judge dismissed this allegation, concluding that the Respondent's failure to bargain with the Union over this subcontracting decision did not violate Section 8(a)(5) and (1) of the Act. The General Counsel and the Charging Party filed exceptions to the dismissal. For the reasons that follow, we find merit in these exceptions, and we reverse the judge and find that the Respondent's decision to subcontract the work was based on a labor-cost motive, did have an adverse impact on the bargaining unit, and was a mandatory subject of bargaining. Accordingly, we find that the Respondent's failure to provide the Union notice and an opportunity to bargain over this subcontracting decision constitutes a violation of Section 8(a)(5) and (1) of the Act.

I. FACTS

The facts, fully set forth in the judge's decision are as follows. The Respondent operates one of its two manufacturing facilities in Northumberland, Pennsylvania, where it produces platform and dump trailers. In 1993, in response to a rising backlog of work orders and increasing customer demand, the Respondent entered into an informal agreement with Bankhead Enterprises in Atlanta, Georgia, an independent company, which had the capability to produce flatbed and dump trailers. Pursuant to this informal agreement, the Respondent engineers the unit, purchases the material, and ships the material (including axles, main rails, front posts, and dogleg hinges) and engineering packages to Bankhead, which then supplies the labor for assembling the trailers. Prior to this arrangement, the Respondent had only shipped out parts for warranty purposes. Bankhead produces two trailers per week for the Respondent's customers located in Florida, Georgia, Tennessee, and North and South Carolina. The informal agreement also provides that Bankhead will not compete with the Respondent by producing trailers on its own. Profits are apportioned 60 percent to the Respondent and 40 percent to Bankhead. It is undisputed that the Respondent entered into this agreement and effectuated the arrangement without prior notice to the Union and without bargaining with the Union at any time.

II. ANALYSIS

(a) Labor cost motive for the subcontracting decision:

In *Torrington Industries*, supra, the Board reaffirmed its application of the principles set forth in *Fibreboard Corp. v. NLRB*, 379 U.S. 203 (1964), in which the Supreme Court held that subcontracting issues are mandatory subjects of bargaining if all that is involved is the replacement or substitution of one group of employees for another to perform the same work under similar conditions of employment. In *Torrington*, the Board held that under such circumstances, ''there is no need to apply any further tests in order to determine whether the decision is subject to the statutory duty to bargain. The Supreme Court has already determined that it is.'' 307 NLRB at 810. The Board stated in dicta that ''there may be cases in which the nonlabor-cost reasons for subcontracting may provide a basis for concluding that the decision to subcontract is not a mandatory subject of bargaining.'' Those cases, however, involve situations in which the employer's proffered reason for the subcontracting decision involves some change in the ''scope and direction'' of its business—matters of core entrepreneurial concerns—and,

[1] In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by unilaterally assigning unit employees to light duty work outside their normal departments or classifications, we note that the complaint alleged only the assignment of work outside of employees' departments. During the hearing, the parties appeared to use the terms ''department'' and ''classification'' interchangeably, and no party contends that the terms are not interchangeable. Accordingly, we adopt the judge's finding.

[2] We agree with the judge's finding that this case does not involve a decision to relocate bargaining unit work governed by the principles set forth in *Dubuque Packing Co.*, 303 NLRB 386 (1991). No party has contested this finding.

thus, outside of the scope of bargaining. *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 667 (1981).[3]

Applying these principles here, we find that the Respondent's decision to subcontract work was not a change in the ''scope and direction'' of its business going to a core entrepreneurial concern, but rather a direct replacement of the Northumberland unit employees by the Bankhead employees to perform unit work. Employing the shorthand of *Torrington*, supra, we find that we are presented with a ''*Fibreboard* subcontracting'' issue. First, the unit work performed at Bankhead is the same work being performed at Northhumberland, namely the manufacture of platform and dump trailers. As the judge found, trailer parts and packages are shipped from Northumberland to Bankhead, and Bankhead primarily supplies the labor. In addition, notwithstanding the Respondent's assertion that the arrangement with Bankhead resulted in the attainment of new business, the record evidence establishes that the Respondent continued to supply trailers for the same customers it had prior to its arrangement with Bankhead. Further, there is no record evidence establishing that Bankhead has manufactured trailers for any new customers and, indeed, doing so would be contrary to its agreement with the Respondent which specifically prohibits Bankhead from competing with the Respondent. In short, Bankhead is performing the same work for the same customers that was and is performed at the Northumberland facility by the unit employees. Thus, there has been no shift in the ''scope and direction'' of the Respondent's business.

Moreover, we also find that labor costs were a factor in the Respondent's decision.[4] In this regard, we note that Plant Manager Michael Gordy testified that in February 1993, when he first took over responsibilities as the Respondent's plant manager, it was his intention to bring overtime under control, and his goal was to reduce overtime to zero. Gordy also testified, however, that the Respondent was experiencing a severe backlog of orders and an increase in customer demand during the same period of time. In these circumstances, we find that the decision to subcontract unit work to Bankhead, which was also being planned in February and March 1993, was inextricably intertwined with the Respondent's admitted goals of reducing the amount of overtime paid to unit employees, while still decreasing the order backlogs and meeting increased customer demand.[5]

(b) Adverse impact on the bargaining unit:

Finally, we also disagree with the judge that the Respondent's decision to subcontract work had not yet reached the point at which an adverse impact on the bargaining unit could be demonstrated. It is settled that the potential loss of overtime or reasonably anticipated work opportunities poses a detriment to unit employees, even where, as here, the ''adverse impact on employees in the unit may not have been established with exactness,'' but ''unit employees may well have lost extra hours of overtime.'' *Clarkson Industries*, 312 NLRB 165, 166 (1993); *Olinkraft, Inc.*, 252 NLRB 1329, 1334 (1980). Here, having found that the Respondent's decision to subcontract work was driven in part by concerns over reducing overtime, it logically follows that overtime opportunities for unit employees were in fact limited when that decision was implemented, and work, which ordinarily would have been perfomed by the unit, was shifted elsewhere. Stated simply, overtime opportunities are lost when work which would or could have been perfomed by the unit is subcontracted away. As urged by the General Counsel and conceded by the judge, the statistical evidence consisting of overtime and production data shows that the unit employees *could* have produced most, if not all, of the trailers which were produced by Bankhead if overtime were increased.[6] Therefore, we conclude that the potential loss of overtime work is a sufficient adverse impact on the unit to require the Respondent

[3] See, e.g., *Oklahoma Fixture Co.*, 314 NLRB 958 (1994), where the Board found an unusual situation in which the employer's decision to subcontract work was not a mandatory subject because the decision was based on concerns over legal liability and the attendant risk of losing all of its revenue because of potential damage to a customer's property. The Board found that such reasons were core entrepreneurial concerns involving ''considerations of corporate strategy fundamental to the preservation of the enterprise,'' and were outside the scope of bargaining insofar as the union ''had no authority or even potential control over the basis for the decision.''

[4] We are mindful that this case arises in the Third Circuit which decided *Furniture Rentors v. NLRB*, 36 F.3d 1240 (3d Cir. 1994). In that case, the court cautioned the Board not to apply *Torrington* too inflexibly and that *Fibreboard* requires the Board to ''look to the reasons motivating the [respondent's subcontracting] decision,'' and, to consider whether ''the employer's decision was driven by labor costs or some other difficulty that can be overcome through collective bargaining.'' Here, we have considered the Respondent's motives for its subcontracting decision and find that that decision was driven in part by direct labor costs (i.e., overtime) which is amenable to resolution through the collective-bargaining process.

[5] Contrary to our dissenting colleague, we do not agree that the judge resolved the issue of Respondent's motivation for the subcontracting decision by a credibility resolution. The quoted language from the judge's decision relied on by our colleague states that ''Gordy's testimony . . . shows that Respondent's reasons for the [subcontracting] arrangement were the market conditions in the South.'' However, as noted above, Plant Manager Gordy also testified that from the time he took over responsibilities as plant manager, his goal had been to reduce overtime, and that indeed he was under a corporate direction to reduce overtime to zero. Thus, our disagreement with the judge goes not to whether Gordy's testimony should be credited, but rather to the conclusion to be drawn from his credited testimony. On the basis of our review of the record, we conclude that labor costs were a motivating factor in the Respondent's subcontracting decision.

[6] We disagree with the judge that the General Counsel was required to establish specifically that employees ''were available to work overtime'' or were ''denied overtime work.'' *Olinkraft, Inc.*, supra, 252 NLRB at 1334.

to notify and bargain with the Union before subcontracting such work away.

Moreover, we note that the Respondent's decision to subcontract work was a departure from its own past practice. While the Respondent had only shipped out parts in the past for warranty purposes, there is no record evidence establishing that the Respondent had ever subcontracted any work prior to its agreement with Bankhead. Indeed, the parties' collective-bargaining agreement specifically prohibits nonunit employees from performing ''any work normally performed by employees in the bargaining unit.'' Accordingly, this departure from ''previously established operating practices,'' as well as the detriment to employees of the potential loss of overtime opportunities, compels a finding that the Respondent's decision here was a mandatory subject of bargaining, over which it accordingly had a statutory duty to bargain. *Westinghouse Electric Corp. (Mansfield Plant)*, 150 NLRB 1574 (1965); *Leeds & Northrup Co. v. NLRB*, 391 F.2d 874, 878–879 (3d Cir. 1968).[7]

III. CONCLUSION

Based on the foregoing, we conclude that the Respondent's decision to subcontract work to Bankhead was a mandatory subject of bargaining and, therefore, that the Respondent had a duty to provide notice to and to bargain on request with the Union over that decision. Because the Respondent failed to provide any notice to or bargain with the Union over this decision, we conclude that it violated Section 8(a)(5) and (1) of the Act, and we shall modify the judge's recommended Order accordingly.[8]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders the Respondent, Dorsey Trailers, Inc., Northumberland, PA Plant, Northumberland, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Changing the unit employees' working conditions, including their assignments to light duty work outside their normal departments or classification; and, subcontracting bargaining unit work, without prior notice and bargaining with the Union.''

2. Substitute the following for paragraphs 2(a), (c), and (d).

''(a) Rescind its unilateral implementation of policies relating to the practice of assigning injured employees to light duty assignments outside their normal departments or classifications, and notify the Union and on request bargain with it regarding any change in the terms and conditions of employment of the unit employees; and, rescind its decision to subcontract the production of trailers to Bankhead Enterprises, Atlanta, Georgia, and notify the Union and on request bargain with the Union, over any such decision to subcontract the production of trailers, as the designated and recognized exclusive collective-bargaining representative of the employees in the following bargaining unit:

> ''All production, maintenance and stock room employees of Respondent at Northumberland, Pennsylvania, but excluding office clerical employees, professional employees, salesmen, guards, watchmen and supervisors as defined in the Act.

''(c) Within 14 days after service by the Region, post at its Northumberland, Pennsylvania facility copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 29, 1994.

''(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.''

3. Substitute the attached notice for that of the administrative law judge.

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[7] We agree with the judge that the Respondent's failure and refusal to supply the requested information regarding its subcontracting arrangement with Bankhead to the Union is a violation of Sec. 8(a)(5) and (1) of the Act. We rely, however, on our finding here that the Respondent had a statutory duty to bargain with the Union over its subcontracting decision and, therefore, a coextensive duty to provide information regarding that decision. *Equitable Gas Co. v. NLRB*, 637 F.2d 980 (3d Cir. 1981); *Service Employees Local 535 (North Bay Center)*, 287 NLRB 1223 fn. 1 (1988); *American Telephone Co.*, 309 NLRB 925, 927 (1992); *Arch of West Virginia*, 304 NLRB 1089 (1991).

[8] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996).

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

MEMBER COHEN, dissenting in part.

I do not agree that the subcontracting in this case is a mandatory subject of bargaining.

To begin with, I do not agree that subcontracting becomes a mandatory subject simply because one set of employees will replace another. Concededly, that factor was present in *Fibreboard Corp., v. NLRB* 379 U.S. 203 (1964), and is relevant to the issue. However, another factor in *Fibreboard*, and one that is highly relevant to the issue, is whether the decision is motivated by labor-cost considerations.[1]

My colleagues attempt to support the notion that the subcontracting here was motivated by labor-cost considerations. In this regard, they note that, in February 1993, Respondent was concerned about excessive overtime. At around the same time, Respondent made its plans to subcontract some unit work. Based on this coincidence in timing, my colleagues find that labor-costs considerations were a motivating factor behind the subcontracting.

That finding is unwarranted. The judge expressly found to the contrary. He found that ''the Respondent's reasons for the [subcontracting] arrangement were the market conditions in the South,'' and that ''the record here does not show a labor-cost motive for the Respondent's [subcontracting] decision . . .'' The judge's findings were based on Plant Manager Gordy's testimony that the subcontracting was motivated by market conditions in the South. My colleagues note that Gordy also testified that he was under a corporate directive to reduce overtime. However, Gordy did *not* testify that the goal of reducing overtime was the motive for the subcontracting. Thus, it simply cannot be inferred from Gordy's credited testimony that reduction of overtime was the reason for the subcontracting.

I see no reason to overturn the judge's credibility resolution.[2] Based on that resolution, I conclude that the subcontracting here is not a mandatory subject of bargaining.

Finally, in light of the above, I conclude that there was no statutory obligation to supply information relevant to the nonmandatory subject of subcontracting.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT change the unit employees' working conditions, including their assignments to light duty work outside of their normal departments or classifications, without prior notice to and without bargaining with the Union.

WE WILL NOT subcontract bargaining unit work, including the production of trailers, without prior notice to and bargaining with the Union.

WE WILL NOT fail or refuse to comply with the Union's demand for relevant information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unilateral implementation of policies relating to the practice of assigning injured employees to light duty work outside their normal departments or classifications and notify the Union and offer to bargain with it regarding any change in the terms or conditions of employment of the employees in the bargaining unit.

WE WILL rescind our decision to subcontract the production of trailers to Bankhead Enterprises, Atlanta, Georgia, and WE WILL notify the Union and on request bargain with the Union, as the designated and recognized exclusive collective-bargaining representative of the employees in the bargaining unit, over any such decision to subcontract the production of trailers.

WE WILL provide the Union the information which is requested by letters of May 29 and June 7 and 22, 1993, and any other information which is relevant and necessary to the performance of its duties as a bargaining representative.

DORSEY TRAILERS, INC.

Donna D. Brown, Esq., for the General Counsel.
Michael S. Mitchell, Esq. (Fisher & Phillips), of New Orleans, Louisiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried on November 14, 1994, in Sunbury, Pennsylvania, upon a complaint issued on April 29, 1994. Based upon charges filed by United Auto Workers International Union and its Local 1868 (the Union), the complaint alleges that the Respondent, Dorsey Trailers, Inc., violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by (a) assigning employees to light duty jobs outside their normal departments without bargaining with the Union, (b) failing and refusing to furnish the Union with requested information about this practice, (c) subcontracting unit work of manufacturing dump trailers to Bankhead Enterprises without bargaining with the Union, and (d) failing and refusing to furnish the Union with requested information about this decision.

The Respondent filed an answer on May 3, 1994, denying the substantive allegations of the complaint.

[1] *Furniture Rentals v. NLRB*, 36 F.3d 1240 (3d Cir. 1994).

[2] *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

On the entire record,[1] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Dorsey Trailers, Inc., Northumberland, Pennsylvania plant is a Georgia corporation, located in Northumberland, Pennsylvania, where it is engaged in the business of manufacturing trailers. With purchases of materials valued in excess of $50,000 directly from points outside the State of Georgia, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

United Auto Workers International Union and its Local 1968 is admittedly a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

The Union has been designated as the exclusive bargaining representative of the following unit among Respondent's employees:

> All production, maintenance and stock room employees of Respondent at Northumberland, Pennsylvania, but excluding office clerical employees, professional employees, salesmen, guards, watchmen and supervisors as defined in the Act.

The parties have operated according to successive collective-bargaining agreements, the latest of which has been in effect from March 4, 1992, to March 1, 1995 (Tr. 9; Jt. Exh. 4).

A. *Light Duty Assignment*

The bargaining agreement does not contain any provision dealing with ''light duty'' assignments for employees who were injured during their employment. Neither was the subject of light duty raised by the Company or the Union during their negotiations leading up to the 1988 and the 1992 contracts (Tr. 30, 72). However, as early as 1987, Respondent's vice president of human resources, Kenny Sawyer, wrote a memorandum entitled ''Northumberland Safety Program'' which among numerous suggestions on safety, recommended ''to work toward providing light duty work for injured employees if approved by the physicians'' (Tr. 65–67; R. Exh. 1). A similar memorandum was submitted by Sawyer during the subsequent year to the plant manager, Al Scholl (R. Exh. 2). On January 4, 1993, the Respondent adopted a safety policy statement which states, inter alia (R. Exh. 3): ''Dorsey Trailers, Inc. Early Return-To Work-Program is an indication that we are doing our best to ensure our concern and respect for our injured employees.'' According to Sawyer's testimony, the Union received a copy of this policy statement in 1993 (Tr. 74).

When the Union confronted the Respondent on May 29, 1993, with a request for information about its light duty policy, the Respondent took the position that its policy had been in effect for several years. Robert McHugh, the Union's International representative, testified that he became aware in 1993 that the Respondent was assigning injured employees to work on light duty assignments. Malvern Bower, the local union president, had notified McHugh in April 1993 that he, as well as several employees had been assigned to light duty work assignments which were not within their normal job classifications.

By letter of May 29, 1993, addressed to Michael Gordy, plant manager, the Union requested the information concerning the light duty job assignments in ''order to administer the Collective Bargaining Agreement and to determine the legality of the Company's'' practices (G.C. Exh. 2). Gordy replied by letter of June 15, 1993, expressing surprise that the Union was unaware of the Company's light duty policy and stating that it had been in existence for over 8 years (G.C. Exh. 3). By letter of June 23, 1993, the Union stated it was unaware of the policy and reiterated its request for information (G.C. Exh. 4). In its letter of June 30, 1993, the Company promised to supply the requested information. However, the Respondent did not provide the requested information for more than 5 months. By letter of December 7, 1993—long after the filing of the instant charges—the Respondent responded to the Union's request for information. That letter stated, inter alia, that its light duty policy is not contained in any written agreements or terms and that ''the employees stayed in their same job classifications while doing, light duty work at the same pay'' (G.C. Exh. 6).

Union Representative McHugh testified that employees could properly be reassigned to light duty work within their assigned classification under article 6 of the collective-bargaining agreement which provides as follows (Tr. 20; Jt. Exh. 4):

> Nothing in this Article is intended to limit the Company's right to move or transfer employees within their assigned classification, as needed to meet production requirements.

However, according to the Union's information, employees were assigned to light duty work outside of their assigned classification and outside their normal departments. McHugh testified as follows (Tr. 12): ''I was made aware of the fact that the company was apparently assigning individuals to classifications which were not their own classification. As a consequence, I sent a letter to a Mr. Gordy, who was the plant manager requesting specific information regarding these light duty assignments.''

The Union ultimately filed a grievance about this issue, because it felt that the Company's practice was prohibited by article 6 of the collective-bargaining agreement and that any proposals in this regard would require changes in the existing contract (Tr. 15, 28).

The Respondent has not denied that employees were assigned to light duty work outside their job assignments. And the parties are in agreement that this subject was not discussed during the negotiations leading to the collective-bargaining agreements. The record is also clear that the Respondent did not notify the Union of its policy until the delayed response on December 7, 1993.

No matter how salutary the Respondent's policy may be, it is clear that the Respondent had a duty to notify the Union

[1] The Respondent's unopposed motion of December 2, 1994, to correct the transcript is granted.

and to bargain about any proposed charges in the employees' working conditions, particularly under the circumstances here where the collective-bargaining agreement contains provisions relevant to the issue. It is furthermore incumbent upon the Company to provide the requested information within a reasonable time. *Safeway Stores*, 252 NLRB 1323 (1980); *Crispo Cake Cone Co*., 190 NLRB 352 (1971). Had the information been provided promptly in response to the Union's May 29, 1993 request, the Union might have reconsidered the filing of a charge on August 9, 1993.

I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to notify and bargain with the Union about its unilateral change in the terms and conditions of employment of the unit employees and by refusing to furnish relevant information within a reasonable time.

B. *Subcontracting*

The Respondent has two manufacturing locations, a plant in Elba, Alabama, employing about 1150 employees, and a plant in Northumberland, Pennsylvania, with 250 employees. The Elba plant produces vans or enclosed trailers and refrigerated trailers. The plant at issue here, located in Northumberland, produces platform and dump trailers (Tr. 64–65, 79). In 1993, the Respondent was faced with an increase in demand for trailers, and it augmented its production staff, particularly welders. To meet rising backorders in an otherwise fluctuating business, the Respondent entered into an informal agreement with Bankhead Enterprises in Atlanta, Georgia. Bankhead is an independent company with the capacity to produce their own flatbed and dump trailers. It employed ''a work force of welders and other people who had the abilities to produce the type of product that [the Respondent was] producing'' (Tr. 97). According to their agreement, Dorsey engineered the units, purchased the material, and shipped the material and engineering package to Bankhead who supplied the labor (Tr. 99). However, even though layoffs have been part of Respondent's cyclical business, the Respondent has not had any layoffs since the Bankhead project. To the contrary, the Respondent has added employees to its work force. Following the initial experimental phase of the project, Bankhead is now producing trailers at the rate of two per week for customers located in southern States like Florida, Georgia, Tennessee, and the Carolinas. Pursuant to the informal agreement between the two companies, Bankhead agreed not to compete with Dorsey by producing trailers on its own and by sharing profits on the basis of 60 percent for Dorsey and 40 percent for Bankhead.

When the Union learned in June 1993 that the Respondent was shipping materials to a manufacturer in the South, McHugh wrote to Plant Manager Gordy requesting certain information about the arrangements. The letter, dated June 7, 1993, demanded to know the identity of the supplier or subcontractor, the number of pieces and units to be subcontracted, the name or title of the job, component product or function, the comparative costs and other information relevant to the Union's representation of the bargaining unit (G.C. Exh. 7). The Respondent's answer of June 15, 1993, stated that the information ''does not relate to subcontracting but to building of a prototype trailer on an experimental basis'' (G.C. Exh. 8). By letter of June 22, 1993, the Union repeated its request stating ''that the Company was going to have trailer manufacturing work, normally performed by bargaining unit employees, performed at a plant in Florida'' (G.C. Exh. 9). Again, the Company refused to provide the requested information, stating in its letters of June 10, 1993, that the ''Company's decision is well within its legitimate rights under Article 16 of the collective bargaining agreement which gives to management the right to determine the methods . . . of production and manufacturing'' (G.C. Exh. 10).

The General Counsel's witnesses testified that they observed and participated in the shipping of trailer parts, such as axles, main rails, front posts, and dogleg hinges, to Bankhead and that the Company had not heretofore sent out parts except for warranty purposes. The Respondent, as already stated, conceded that parts had been shipped to Bankhead and argues that its activity in this regard cannot be regarded as subcontracting, but that the Respondent is simply ''involved in a joint venture with another company, that it has resulted in a successful attainment of new business'' (Jt. Exhs. 2 & 3). The Respondent demonstrated its point by an example where it was able to bid on a bulk order and outbid its competition by agreeing to build the total of 28 trailers for a customer by using the Bankhead facility in cooperation with its Northumberland plant. An additional benefit of the arrangement was that Respondent's customers who had received trailers manufactured by the Bankhead facility were located in the South: Walpole, Inc.; Trailer Concepts, Inc.; Carolina Truck & Equipment, Inc.; and Hughes Motors. The financial benefits to both Companies were explained by Plant Manager Gordy: Dorsey Trailers benefited by saving high freight costs of shipping the finished product which is more bulky than the materials, and Bankhead benefited by the quality discounts in purchasing materials from its suppliers.

The General Counsel argues that unlike the relocating issue decided in *Dubuque Packing Co*., 303 NLRB 386 (1991), the Company's practice outlined above presents a subcontracting issue and a mandatory subject of bargaining. *Fibreboard Corp. v. NLRB*, 379 U.S. 203 (1964); *Torrington Industries*, 307 NLRB 809 (1992). Arguing that the Respondent's reason for the decision to enter into the business venture with Bankhead was to reduce or eliminate overtime work for the unit employees, the General Counsel states that even under the *Dubuque* test, labor costs were of concern to the Respondent based upon Gordy's testimony that he intended to reduce overtime when he first arrived at the Respondent's facility in February 1993 as the plant manager.

The Respondent's position is that this case does not present a subcontracting issue at all, and that Respondent's business decision is simply a joint venture.

The record supports the General Counsel's characterization of Respondent's business venture as presenting a subcontracting issue. A joint venture between Dorsey Trailer and Bankhead would not preclude its consideration as a subcontracting venture. Clearly, Dorsey is the dominant entity which designs the trailer, purchases from its suppliers the necessary parts, and sells to its customers. Bankhead supplies the labor to assemble the units and also furnishes much of the necessary raw materials, ''aluminum sheet steel . . . electrical components, brake components . . . a couple hundred items . . . that [Dorsey does not] try to gather up'' (Tr.

127). Bankhead has also purchased independently items, such as wheels, tires, axles, and electric components to manufacture dump trailers for the Respondent (Tr. 101).

Gordy's testimony also shows that Respondent's reasons for the arrangement were the market conditions in the South. Its plant in Northumberland experienced a backlog in orders and its ''dealers down in the south that basically got left out because there's no production slots available for them'' (Tr. 96). For Dorsey there is ''the need to get additional units produced, for [Bankhead] is the need to get additional product put in their plant'' (Tr. 97). Part of the equation to stay competitive in the sale of dump trailers is shipping costs involved in transporting a dump trailer to a customer. Unlike flatbed dump trailers which can be stacked, dump trailers are shipped individually, raising the costs to the point of wiping out a profit. The Bankhead facility was accordingly well suited to serve the customers in the South. Nevertheless, according to the Respondent its decision to subcontract with Bankhead was ''not saving money manufacturing at Bankhead . . . [i]t's to build trailers to meet market demand is the issue'' (Tr. 124–125).

I find Respondent's testimony in this regard plausible, for the record shows that the existing work force in Northumberland was not affected by the arrangement. There were no layoffs or reductions in its employee complement. Indeed, the Respondent augmented its labor force (Tr. 104):

> We added welders onto the dump line . . . in March 1993 we increased production and on that line we determined we needed additional people on the dump line as well as additional welding machines.

According to Gordy, the Respondent intends to increase the working capacity in the plant during the coming year (Tr. 107–108). And even though, the Respondent intended to reduce overtime to zero, the employees in Northumberland continue to work overtime (R. Exhs. 7–10). Respondent's statistics showing the number of employees, the hours worked, units purchased, and overtime worked show that the subcontracting arrangement had no effect on the unit employees. The General Counsel argues in this regard that the unit employees were adversely affected because overtime was reduced and that they could have produced the extra units by working more overtime. While the General Counsel may be correct in his argument, it should be noted that he relies on the statistical evidence showing the varying overtime totals for each month in 1993 and 1994. There is no record evidence showing that employees were available to work overtime or that anyone was denied overtime work or that any unit employee was actually adversely affected.

Concededly, the issue presented is not simple or clear. I agree that the case does not present a decision to relocate bargaining unit work. Instead, Respondent's practice is one of subcontracting governed by *Fibreboard Corp. v. NLRB*, supra. (1964). The Board relying upon *Fibreboard* in *Torrington Industries*, 307 NLRB at 810, stated, ''that there may be cases in which the nonlabor-cost reason for subcontracting may provide a basis for concluding that the decision to subcontract is not a mandatory subject of bargaining.'' The record here does not show a labor-cost motive for Respondent's decision nor a labor-related impact upon the bargaining unit (with the exception of the tenuous overtime scenario).[2] Accordingly, this case may present the rare instance where the subcontracting decision was not a mandatory subject of bargaining. *Furniture Rentors of America*, 311 NLRB 749 (1993), enfd. in part 36 F.3d 1240 (3d Cir. 1994). This is so because the issue may not yet have reached the point at which an adverse effect on the bargaining unit can be demonstrated. I accordingly dismiss this allegation in the complaint.

However, considering the close nature of the issue presented, I find a violation of Section 8(a)(5) and (1) based upon the Respondent's refusal and failure to provide the information requested by the Union. An information request does not require a showing of a violation of law or a breach of contract. The standard to support a request for information relevant to the Union's duties is a liberal discovery type standard. *Walter N. Yoder & Sons v. NLRB*, 745 F.2d 531, 535 (4th Cir. 1985). The employer has an obligation to comply with a union's request for information that will assist the union in fulfilling its responsibility as the employees' statutory representative. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). And a failure to provide relevant information on request is a breach of the employer's duty to bargain in good faith and violates Section 8(a)(1) and (5) of the Act. The information sought here is certainly relevant because it has some bearing on the issue for which the information is requested and has probable or potential relevance to the union duties. *Pfizer, Inc.*, 268 NLRB 916, 918 (1984). The Union should be in a position to examine the subcontracting practice, to assure that there are no violations of the collective-bargaining agreement, and to determine to what extent the Company's practice has an effect upon the unit employees. The Union should also be in a position to monitor the Respondent's subcontracting practice in the future to make a determination whether the practice has changed or whether labor costs will become a factor in the future so as to require notice and bargaining. I accordingly find that that the Respondent's refusal to furnish the requested information to the Union violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union is the collective-bargaining representative of Respondent's employees in the following unit:

> All production, maintenance and stock room employees of Respondent at Northumberland, Pennsylvania, but excluding office clerical employees, professional employees, salesmen, guards, watchmen and supervisors as defined in the Act.

4. By assigning employees to light duty work outside their normal departments and classifications, the Respondent changed the working conditions of its unit employees without prior notice and without bargaining with the Union in violation of Section 8(a)(5) and (1) of the Act.

[2] The amount of lost overtime must be substantial as a result of subcontracting to require bargaining. *Cities Service Oil Co.*, 158 NLRB 1204 (1966).

5. By its failure and refusal to comply within a reasonable time with the Union's information requests of May 29, 1993, relating to light duty assignment and by its failure and refusal to comply entirely with the Union's information requests of June 7, 1993, relating to subcontracting, all of which is relevant to the Union's duties as the employees' bargaining representative, the Respondent violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, I shall recommend that it cease and desist therefrom and, to take certain affirmative action designed to effectuate the purposes of the Act. Having found that the Respondent changed the employees' working conditions without notice to the Union and without bargaining with the Union, the Respondent must be ordered to cease the practice, cancel the policy, and to bargain collectively. And having found that the Respondent failed and refused to provide the Union with the information relevant to its performance and duty as the employees' bargaining agent the Respondent will be ordered to comply with the Union's information requests.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Dorsey Trailers, Inc., Northumberland, PA Plant, Northumberland, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Changing the unit employees' working conditions, including their assignments to light duty work outside their normal departments or classifications, without prior notice and without bargaining with the Union.

(b) Failing and refusing to comply with the Union's demand for relevant information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unilateral implementation of policies relating to the practice of assigning injured employees to light duty assignments outside their normal departments and classifications and notify the Union and offer to bargain with it regarding any change in the terms or conditions of employment of the employees in the following bargaining unit:

> All production, maintenance and stock room employees of Respondent at Northumberland, Pennsylvania, but excluding office clerical employees, professional employees, salesmen, guards, watchmen and supervisors as defined in the Act.

(b) Provide the Union the information which is has requested by letters of May 29 and June 7, 1993, and any other information which is relevant and necessary to the performance of its duties as a bargaining representative.

(c) Post at its Northumberland, Pennsylvania facility copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''